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No. 95-513

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1995

BANK MELLI IRAN; BANK MELLAT,
Petitioners,

vs.

SHAMS PAHLAVI, aka H.I.H. PRINCESS SHAMS PAHLAVI,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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RESPONDENT'S BRIEF IN OPPOSITION

Petitioners urge that the United States Government agreed with the Islamic Republic of Iran to eliminate due process in United States courts. Had the court of appeals so held, this case clearly *would* call for certiorari. Instead, the court of appeals ruled consistently with long-established law. It held that a foreign judgment will not be recognized and enforced if not procured in accordance with due process. This decision presents no grounds for certiorari, and the Petition should be denied.

ADDITIONAL STATUTES INVOLVED

This case also involves the Uniform Foreign Money-Judgments Recognition Act, enacted in California as CAL.CIV.PROC.CODE §§ 1713-1713.8. Section 1713.4 of that statute is reproduced in Respondent's Appendix A.

COUNTERSTATEMENT OF THE CASE

Certain matters have been omitted or not fully stated in the Petition; this counterstatement will explicate them.

I.

The Iranian Hostage Crisis And The Algerian Accords[1]

Petitioners rest their plea primarily on the Algerian Accords, the executive agreements which ended the Iranian hostage crisis of 1979-81. *See Declarations of the Government of the Democratic and Popular Republic of Algeria, reprinted in* DEPT. ST. BULL., Jan. 19, 1981; *see generally Dames & Moore v. Regan*, 453 U.S. 654, 101 S.Ct. 2972, 69 L.Ed.2d 918 (1981). The crisis began on November 4, 1979, after Shah Mohammed Reza Pahlavi entered a New York hospital for cancer treatment. Iranians seized the American Embassy in Tehran, and for 444 days held 52 Americans hostage. International condemnation, a personal

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[1] Much of the history of the Iranian revolution and the takeover of the American embassy in Tehran is common knowledge. The details are set forth in hearings conducted by Congress after the hostages' release. *Iran's Seizure of the United States Embassy: Hearings before the House Comm. on For. Affairs*, 97th Cong., 1st Sess. (February 17, 19, 25 and March 11, 1981) *("House Hostage Hearings"); The Iran Agreements: Hearings before the Senate Comm. on For. Relations*, 97th Cong., 1st Sess. (February 17, 18 and March 4, 1981) *("Senate Hostage Hearings")*. The hostage crisis and the negotiations also are detailed in W. CHRISTOPHER *et al.*, AMERICAN HOSTAGES IN IRAN: THE CONDUCT OF A CRISIS (1985).

appeal from the Pope, a United Nations Security Council Resolution, and an order by a unanimous International Court of Justice all failed to produce the hostages' release. *See generally Senate Hostage Hearings* at 5-24.

In January 1981, the Iranians released the hostages, following intense negotiations between Iran and the United States, with Algeria acting as an intermediary. The Algerian Accords contained two primary agreements, the Basic Declaration and the Claims Settlement Declaration. Among other points, the Basic Declaration addressed the Iranians' demand that the Shah's wealth be returned. On this point, the United States committed that in suits brought in American courts urging that the Shah or close members of his family had wrongfully taken assets from Iran, the United States would make known its view that Iranian judgments and decrees relating to such assets should be enforced in accordance with United States law. (Petition, App. G.) Upon the signing of the Accords the day before he left office, President Carter issued various implementing executive orders, and President Reagan subsequently reaffirmed the United States' commitment.

II.

Iran In The 1980's — The Reign Of Terror

Following the hostages' release, Iranian society continued to suffer the throes of the revolution. As a result, State Department travel advisories throughout the 1980's warned against travel to Iran, citing the enmity between the Government of Iran and individuals associated with the United States. During that time, Iran continued to deny basic human rights, routinely torture prisoners, and summarily execute thousands of people opposed to the Khomeini regime. Iranian tribunals were not impartial, counsel were discouraged from representing clients associated with the Shah, and trials were unfair.

In 1982, for example, the State Department reported that in Iran "Constitutional guarantees of human rights are ignored in practice," that torture is "perpetrated by the revolutionary Government," and that "most trials in Iran are now neither fair nor public." *Country Reports on Human Rights Practices for 1982: Report Submitted to the Sen. For. Rel. Comm. and House For. Affairs Comm. By the Department of State* (1983) at 1137-1141 *("State Dept. Rept.")*. In 1983 the State Department referred to a likely figure of 1,000 summary executions during the previous year and rampant stories of torture in Iranian prisons. Under the heading "Denial of Fair Public Trial," it stated that "no trial by a revolutionary court can be called fair or public." *State Dept. Rept. for 1983* at 1256-1260. The 1985 State Department publication reported the following finding:

> Although the [Iranian] Constitution does guarantee many basic human rights, including rights related to due process (e.g., the right to be informed in writing of charges immediately after arrest, the right to legal counsel, the right to trial by jury in political cases), *the revolutionary court system ignores these provisions in practice. . . .*

State Dept. Rept. for 1985 at 1237 (emphasis added).

Throughout the 1980's, and continuing through today, the United States also has refused to restore diplomatic relations which it severed during the hostage crisis.

III.

The Danger To Those Associated With The Shah

Equally important, members of the former royal family, or those who had been associated with them, remained at risk throughout the world. Recognizing the personal danger to the royal family, the United States had refused the Iranian demand, made during the hostage crisis, to return

the Shah to Iran. *House Hostage Hearings* 155 (February 19, 1981) (Statement of Hon. Warren Christopher). Earlier an attempt had been made on the life of the Shah's other sister. N.Y. TIMES, Dec. 8, 1979 at 4, col. 4. Since then at least one member of the former royal family has been assassinated on the streets of Paris. *Id.* at 1, cols. 3, 4. Then, in 1991, Shahpur Bakhtiar, the last prime minister under the Shah, was likewise assassinated, an act which the State Department called "[t]he outstanding example of Iranian state terrorism in 1991." United States Department of State, *Patterns of Global Terrorism: 1991* 30 (April 1992).

In 1992, when this action was filed, the State Department continued to officially designate Iran as a country that fomented terrorism, *ibid.*, thereby posing great danger to those associated with the former Shah.

IV.

The Within Action — An Attempt To Recover On Stale Judgments Rendered Against The Shah's Sister During The Ongoing Revolution

During this period of genuine terror, Petitioners — two Iranian banks — sued Shams Pahlavi in Iran. Pahlavi is the elder sister of the late Shah, and currently is an American citizen. The banks did not assert that Pahlavi held "property and assets in the United States . . . belonging to Iran," the reach of the Algerian Accords' Basic Declaration. (Petition, App. G.) Litigation over Pahlavi's assets was the subject of a separate lawsuit brought by the Islamic Republic of Iran, which was dismissed. *Islamic Republic of Iran v. Pahlavi*, WEC 69489 (Cal.Superior Ct.), *judgment of dismissal aff'd*, 2d Civil No. B072484 (Cal.Ct.App.), *cert. denied*, ___ U.S. ___, 130 L.Ed.2d 420, 115 S.Ct. 513 (1994). Rather, the banks sought to recover on promissory notes Pahlavi had signed in pre-revolutionary Iran (and which had

been secured by property thereafter confiscated during the revolution). Serving Pahlavi only by publication in Iranian newspapers, the banks procured two judgments in 1982 and an additional one in 1986, totalling in excess of $32 million.

Six years after the last of these judgments (and at least two years past the statute of limitations, CAL.CIV.PROC.CODE § 343), the banks sued in the district court, seeking enforcement of these Iranian judgments under American law. The district court converted Pahlavi's motion, made under FED.R.CIV.P. 12(b)(6), to a motion for summary judgment, and gave the banks time to submit materials in opposition, which they did. The United States also submitted a statement, both referring to the official State Department publications, which had described the absence of due process in Iran, and an affidavit from a State Department official detailing the lack of due process in Iranian courts. The banks made no objection to the materials submitted by the United States.

The district court concluded that Pahlavi had carried her burden, that the banks had not shown a genuine issue of material fact, and that the Iranian judgments could not be recognized because they did not comport with standards of due process. The district court dismissed the action, and the Ninth Circuit affirmed.

With these matters in mind, it is clear that the writ should not issue.

SUMMARY OF ARGUMENT

This case presents nothing startling. Each court considering the Accords' provisions about the Shah has concluded that normal rules of litigation apply. In upholding Pahlavi's right to due process, the court of appeals here said the same thing with respect to the most fundamental of rights. The summary judgment procedure also was routine, affording

the banks every opportunity to demonstrate a triable issue of fact, but creating no issue for this Court to resolve.

REASONS FOR DENYING THE WRIT

I.

THE DECISION BELOW RAISES NO ISSUE FOR REVIEW CONCERNING THE ALGERIAN ACCORDS

In holding that "attempts to enforce judgments under the Algerian Accords are not exempt from due process defenses" (Petition, App. A at 12a), the court of appeals acted consistently with every other court which has construed these provisions of the Accords. Each court has held that members of the Shah's family do not lose their rights by virtue of the Accords. *Islamic Republic of Iran v. Pahlavi*, 160 Cal.App.3d 620, 206 Cal.Rptr. 752 (1984) (Accords do not create special rules in satisfying service of process requirements); *Islamic Republic of Iran v. (Mohammed Reza and Farah Diba) Pahlavi*, 62 N.Y.2d 474, 478 N.Y.S.2d 597, 467 N.E.2d 245 (1984), *cert. denied*, 469 U.S. 1108, 83 L.Ed.2d 778, 105 S.Ct. 783 (1985); (Accords do not strip the Shah's family of non-enumerated defense of *forum non conveniens*); *Islamic Republic of Iran v. (Ashraf) Pahlavi*, 473 N.Y.S.2d 801 (1984), *aff'd mem.*, 486 N.Y.S.2d 939, 476 N.E.2d 338 (1985) (same). In holding that the Accords do not divest Pahlavi of her due process rights, the opinion below presents no novel issue or extraordinary interpretation for review by this Court.

Furthermore, the decision below was indisputably correct. The Accords obligate the United States, in an appropriate case, to state that Iranian decrees and judgments are to be enforced "in accordance with United States law." (Petition, App. G.) To assert that by such language the Accords eviscerate due process, not protect it, stands the language of

the Accords on its head. It violates the requirement that "[t]he clear import of treaty language controls unless 'application of the words of the treaty according to their obvious meaning effects a result inconsistent with the intent or expectations of its signatories.' [citation omitted.]" *Sumitomo Shoji America, Inc. v. Avagliano,* 457 U.S. 176, 180, 72 L.Ed.2d 765, 102 S.Ct. 2374 (1982).

In the United States, enforcement of foreign judgments traditionally depended on whether those judgments comported with civilized notions of fairness. If so, such judgments were recognized under the comity of nations, and entitled to be enforced in American courts. *Hilton v. Guyot,* 159 U.S. 113, 16 S.Ct. 139, 40 L.Ed. 95 (1895). In many states, including California where this action was brought, the common law has been codified in the Uniform Foreign Money-Judgments Recognition Act. CAL.CIV.PROC.CODE § 1713 *et seq.* Section 1713.4 expressly provides that foreign money judgments shall not be recognized if they were procured under a system that does not comport with due process of law.

This was the state of the law at the time that the Accords were negotiated, and it is inconceivable that the words "in accordance with United States law" could be taken to eliminate the most basic tenet of American law, the requirement of due process. Rather, the negotiating history corroborates the plain meaning of the Accords. Contrary to the representations made by the banks here — that the United States "undertook the duty to return assets to the Islamic Republic of Iran" (Petition at 9) — American negotiator Warren Christopher testified before Congress that such assets could be returned only if a court, having first guaranteed the defendant full due process of law, then ordered them returned:

> Throughout the crisis, Iran insisted on a return of the wealth of the former Shah and his family. . . .

> During the negotiations, the U.S. never deviated from the position that under our system of government, the transfer of private property from one party to another can be ordered only pursuant to procedures which afford due process of law. Late in the negotiations Iran finally accepted that principle, and it is reflected in the Declarations. As a result, the Shah's estate and his close relatives will have full protection of due process of law with respect to claims against their properties by Iran.
>
> Under the Declarations (Paras. 12-15) the U.S. has agreed to take certain actions in connection with any lawsuits brought by Iran regarding the Shah's wealth, but these commitments are carefully limited.
>
> . . . .
>
> In sum, the United States refused to return the Shah to Iran prior to his death, and it has also steadfastly refused to confiscate and transfer his U.S. assets, insisting instead on the maintenance of the Constitutional requirements of due process of law.

House Hostage Hearings, 153-55.

This history confirms that the words "in accordance with United States law" have the obvious meaning, that the provisions of United States law govern the course of any lawsuit. In accord with this history, when the United States stated its position in the district court here it made no assertion that the Accords deprived Pahlavi of her due process rights. To the contrary, it presented evidence that due process was lacking in Iran at the time when these judgments were obtained.

In the Petition, however, the banks assert that they would be entitled to enforce their Iranian judgments even without the Algerian Accords, and that therefore "Paragraph 14

requires that Iranian judgments receive special treatment as compared to the ordinary rule of United States law". (Petition at 9.) This contention is wrong.

Traditionally, an unrecognized government, such as the Islamic Republic of Iran, had no right to proceed in American courts. *Guaranty Trust Co. v. United States*, 304 U.S. 126, 137, 58 S.Ct. 785, 82 L.Ed. 1224 (1938); *cf. Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 410, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964). In the face of this traditional understanding of the law, the Algerian Accords gave an assurance of access to the courts when access might not have been granted otherwise. In fact, subsequent cases have identified the Algerian Accords as one basis for saying that the Islamic Republic of Iran may appear in United States courts even though the United States still does not recognize the government. *National Petrochemical Company of Iran v. M/T Stolt Sheaf*, 860 F.2d 551, 555 (2d Cir. 1988), *cert. denied*, 489 U.S. 1081, 103 L.Ed.2d 840, 109 S.Ct. 1535 (1989). Thus, the only "special treatment" the Accords gave was the right to enter American courtrooms when otherwise some courts might have interpreted existing precedent as barring such suits.

The Accords therefore allowed the banks to bring suit. They did not gut due process. It would be remarkable if they did. It was pedestrian that they did not.

II.

THE DECISION PRESENTS NO IMPORTANT ISSUE WITH RESPECT TO SUMMARY JUDGMENT PROCEEDINGS

Likewise, although the banks assert that the court of appeals erred in upholding the summary judgment, they identify nothing unusual about summary judgment law which merits this Court's review. The court of appeals did

not create any new rules relating to summary judgment or issue an opinion at conflict with summary judgment opinions of other circuits or this Court. At most the banks have urged that the court of appeals misapplied the law, but an isolated misapplication of the law is not a basis for certiorari.

Moreover, the banks ground their argument on language from *Celotex Corp. v. Catrett*, 477 U.S. 317, 324, 91 L.Ed.2d 265, 106 S.Ct. 2548 (1986) which they take out of context. The court of appeals here stated that the material submitted by the banks was in the form of an information-and-belief affidavit from counsel, and thus entitled to no weight in opposition to the summary judgment motion. (Petition, App. A., 15a-16a). In the Petition, the banks quote from *Celotex* that "We do not mean that the nonmoving party must produce evidence in a form that would be admissible at trial in order to avoid summary judgment." (Petition at 11). That sentence, however, referred to the fact that FED.R.CIV.P. 56 allows for a nonmoving party to provide a variety of information in opposition to a motion — affidavits, depositions, answers to interrogatories and the like — many of which, such as affidavits themselves, would not be admissible at trial. *Celotex, supra*, 477 U.S. at 324. The quoted material from *Celotex* does not provide that affidavits may be made on the basis of information and belief.

It could not do so, because Rule 56(e) itself says just the opposite:

> Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

The court of appeals properly applied Rule 56. The court of appeals' decision raises no novel issue of summary judgment law which justifies the granting of certiorari.

III.

THE RECORD PRESENTS INDEPENDENT GROUNDS FOR SUSTAINING THE DECISION BELOW

The court of appeals' opinion carries with it independent reasons for affirming. As the court of appeals noted, the banks failed to sustain their burden. Pahlavi showed that she had not received notice of the Iranian suits, that she could not safely return to Iran, that witnesses and counsel were intimidated, and that she could not obtain a trial that in any sense could be considered fair. (Petition, App. A at 16a). The banks' response, even if admissible, did not counter this showing. Nor was this just a question of "*United States* notions of due process," (Petition at i (emphasis added)), though due process in fact was required. Instead, the matters concerned core ingredients of a civilized judicial system. (Petition, App. A at 17a). The record required affirmance in any event, and certiorari would not change that.

CONCLUSION

The banks took the extraordinary position that they could enforce foreign judgments which did not comport with any sense of due process. The court of appeals instead held them to the standard requirement of compliance with due process. The decision presents no grounds for review, and the Petition should be denied.

Dated: October 16, 1995

Respectfully submitted,

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APPENDIX

APPENDIX

RESPONDENT'S APPENDIX A

CAL. CIV. PROC. CODE § 1713.4

§ 1713.4 Nonconclusive foreign judgment; nonrecognition

(a) A foreign judgment is not conclusive if

(1) The judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) The foreign court did not have personal jurisdiction over the defendant; or

(3) The foreign court did not have jurisdiction over the subject matter.

(b) A foreign judgment need not be recognized if

(1) The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;

(2) The judgment was obtained by extrinsic fraud;

(3) The cause of action or defense on which the judgment is based is repugnant to the public policy of this state;

(4) The judgment conflicts with another final and conclusive judgment;

(5) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court; or

(6) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.